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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,092	12/21/2001	Jerome Branter	Roof	8292

7590 06/23/2003
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EXAMINER

YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 06/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,092

Applicant(s)

BRANTER, JEROME

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is a first office action for application Serial No. 10/026,092 filed December 21, 2001.

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. Further, the US Patent No. 5,749,738 does not appear to be relevant to the claimed invention. Please check if it a correct U.S. Patent number.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "60" (page 6, line 3). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because the exploded view, i.e. Fig. 1, with the separated parts of the same figure, should be embraced by a bracket in order to show the relationship or order of assembly of various parts. Correction is required.

Claim Objections

4. Claim 1 is objected to because of the following informalities: in line 3, the recited language: “the upper and lower cross members engaged to and between the arms” appears to read “.....between the uprights” but not to “the arms”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent No. 2,157,755.

UK reference shows and discloses a roof retaining apparatus comprising a framework including at least two angulated arms (no numbered), an upright (5, 6) engaged to each arm, each upright having a top lateral sleeve (11), an upper cross member (4) and a lower cross member (16) engaged to and between uprights, said upper cross member having ends being slideable received by the sleeves (11) on the uprights, the arm having a flat portion being secured to a roof, the arm having a structure such as a brace (17) for mounting scaffolding thereover, and at least one net (18) stretched between and fixed to the uprights and cross members, wherein the net is removably secured to the upright and cross members by cooperating securement devices such as hooks which inherently via eyes (see lines 87-88) for providing a safety feature to prevent an operative from falling from the roof of a building.

7. Claims 1, 5-8, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Elkins et al. (US Patent No. 5,779,227).

Elkins et al. shows and discloses a roof retaining apparatus comprising a framework including at least two angulated arms (16) each having a flat portion (38) being mounted to a roof, an upright (40) engaged to the flat portion of each arm, each upright having a top and bottom lateral sleeve (48, 49), an upper cross member (20) and a lower cross member (22 or 24) engaged to and between uprights, said cross members each having ends being secured to the sleeves of the uprights by pins (44, 50), the arm having a structure such as a brace (41) for mounting scaffolding thereover, and at least one net (28) stretched between and fixed to the uprights and cross members by suitable securement device.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-7, 9, 11, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Probst (US Patent No. 3,901, 481) in view of UK Patent No. 2,157,755.

Probst shows and discloses a roof retaining apparatus comprising a framework including at least two angulated arms (5), each arm having a flat portion (6) having a plurality of angular slots (10) at a free end of the flat portion to engage with fasteners such as nails (9) for securing

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the arm to a roof (8) , each arm having an upstanding flange (21) forming a channel-shaped bracket that provides a structure for mounting scaffolding (22) thereon, the upstanding flange (21) having a vertical sleeve (15) attached thereon, an upright (24) having an end being received and engaged by the vertical sleeve to each of the arms, each upright having at least a pair of lateral sleeves (26, 28), an upper cross member (27) and a lower cross member (29) each having ends being slideable received by the sleeves (26 or 28) on the uprights respectively, said each sleeve having bores receiving with a pin (30) therein to engage and secure the ends of cross members to the uprights. Probst fails to define the roof retaining apparatus including a net stretched between and fixed to the uprights and the cross members as claimed. UK reference teaches a roof retaining apparatus comprising a framework including uprights and cross members, and a net having securement device such as hooks (19, 20) along the edges of the net to hang the net pivoting from an upper cross member and rest against a lower cross member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the roof retaining apparatus of Probst having a net hooked and stretched between the and fixed to the framework as taught by UK reference for providing a safety features for preventing an operative falling from the roof of the building.

10. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Probst '481 in view of UK Patent '755 as applied to claim 1 above, and further in view of Brueske (US Patent No. 3,889,405).

Claims are considered to be met by Probst combined with UK reference as explained and applied above rejections except that either Probst or UK reference does not define the roof

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retaining device having the upright and cross members having cooperating securement devices comprise eyes to be attached by the securement devices along the edges of a net. Brueske teaches a roof safety device comprising a framework including uprights mounted on a roof, a net having hooks (76) forming a securement device mounted along the edges of the net, and the uprights each having a plurality of eyes providing cooperative securement device for receiving the hooks of the net. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the roof retaining apparatus of Probst combined with UK reference having cooperative securement device such as eyes mounted along the framework to receive hooks formed along the edges of the net as taught by UK reference, as a well know removable cooperative mounting mechanism, for removably securing the net to the framework to provide a safety device to the roof retaining apparatus.

11. Claims 12-13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Probst '481 in view of UK Patent '755 as applied to claims 1 and 11 above, and further in view of Murray (US Patent No. 6,053,281).

Claims are considered to be met by Probst combined with UK reference as explained and applied above rejections except that either Probst or UK reference does not define the sleeve, the upright and the cross member end flanges of the apparatus having bores being aligned together and a pin being engaged through the aligned bores for securing the upright, the cross member together. Murray teaches a safety device comprising an arm being secured to a building roof, a vertical sleeve latterly mounted on the arm, and an upright post (12) having lower end being received into the vertical sleeve, wherein the vertical sleeve and the lower end of the upright post

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having bores being aligned each other and a pin being engaged through the aligned bores for securing the upright post to the vertical sleeve. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the roof retaining apparatus of Probst combined with UK reference having the upright and the sleeves having bores aligned each other to receive a pin as taught by Murray as an old and well know connecting mechanism for removably and adjustably mounting two structural elements together.

Citations

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pedley '319 teach a safety device having a net mounted to a framework each including cooperative securement devices such as hooks via eyes as similar to the claimed invention. UK Patent No. 2,113,285, Cloutier et al. '629 and Palmer et al. '941 teach various roof retaining apparatus having a framework mounted on arms mounted on the roof as similar to the claimed invention. Bearden '692 and Martens '923 teach various roof retaining apparatus having an arm for supporting scaffold thereon as similar to the claimed invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Winnie Yip
Patent Examiner
Art Unit 3637

wsy
June 17, 2003